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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5949 of 2007
Date of decision: 19.11.2007

Ashok Kumar and another **...Petitioners**

Versus

Smt. Savitri Devi and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. R.S.Budhwar, Advocate for the petitioners.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated October 27, 2007 passed by learned Civil Judge (Senior Division), Karnal whereby prayer made by the petitioner for stay of auction of the property in dispute prior to the decision of the application dated September 22, 2007 and objections dated August 20, 2005 was declined.

For the view I am taking, I do not deem it appropriate to issue notice to the respondents in view of the fair stand taken by the petitioners as is discussed below.

The dispute arose out of a decree passed in favour of respondents no.1 and 2 for a sum of Rs. 1,00,000/- alongwith interest thereon. Claim in the suit filed by respondents no.1 and 2 against the petitioners is for compensation on account of death of Sanjiv Kumar. On the failure of the petitioners to satisfy the decree, execution was filed to which objections were raised by the petitioners. In the absence of the petitioners, the same were dismissed for non prosecution. Vide order dated September 15, 2007 warrant of sale regarding attached property was issued with the schedule for auction on November 14, 2007 and for report on December 8, 2007. Learned counsel for the petitioners submitted that immediately after the above order was passed on September 15, 2007 at 11.05 A.M. when they had gone to call their Advocate an application for

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restoration of objections were filed in which notice has been issued to the respondents no.1 and 2/decree holders. Prayer for interim stay of the auction was rejected. The property had been auctioned on November 14, 2007 and the case is now fixed for December 8, 2007 for further consideration of the application of the petitioners and also for submission of the report of the auction. The submission is that in case the property is sold, which is the only the residential house with the petitioners, they will suffer irreparable loss. Otherwise also in execution of a decree, the only residential house cannot be sold.

Learned counsel for the petitioners, on instructions from the petitioners, submitted that they will pay 50% of the decretal amount to the decree-holders on the next date of hearing i.e. December 08, 2007 and the balance amount shall be paid on or before February 08, 2008 and with the result decree against the petitioners shall be satisfied in totality.

Keeping in view the stand of the petitioners and also interest of the decree holders and also the fact that sale has yet not been confirmed in favour of the auction purchaser, in the interest of justice, it is directed that in case petitioners pay 50% of the decretal amount on December 8, 2007 to the decree holders before the Executing Court, learned Executing Court will adjourn the execution proceedings to February 8, 2008 to enable the petitioners to pay balance decretal amount to satisfy the decree. However, this will not preclude learned Executing Court to suitably compensate the auction purchaser as it deems fit.

The revision petition is disposed of accordingly.

November 19, 2007 **(Rajesh Bindal)**
Pka **Judge**